



KeyCite Red Flag - Severe Negative Treatment

Unconstitutional or PreemptedUnconstitutional as Applied by [Doe v. Rausch](#), E.D.Tenn., May 14, 2020



KeyCite Yellow Flag - Negative TreatmentProposed Legislation

[West's Tennessee Code Annotated](#)

[Title 40. Criminal Procedure](#)

[Chapter 39. Offender Registration and Monitoring](#)

[Part 2. Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification and Tracking](#)

[Act of 2004 \(Refs & Annos\)](#)

T. C. A. § 40-39-207

§ 40-39-207. Petition or request to terminate registration requirements;
effect of denial; removal upon expungement; violent juvenile sexual offenders

Effective: July 10, 2019

[Currentness](#)

(a)(1) Except as otherwise provided in subdivision (a)(3), unless a plea was taken in conjunction with [§ 40-35-313](#), no sooner than ten (10) years after termination of active supervision on probation, parole, or any other alternative to incarceration, or no sooner than ten (10) years after discharge from incarceration without supervision, an offender required to register under this part may file a request for termination of registration requirements with TBI headquarters in Nashville. If the person is required to register under this part due to a plea taken in conjunction with [§ 40-35-313](#), an offender required to register under this part may file a request for termination of registration upon successful completion of a term of judicial diversion pursuant to [§ 40-35-313](#) and upon receiving an order from a court of competent jurisdiction signifying the successful completion of the term of judicial diversion and the dismissal of charges pursuant to [§ 40-35-313](#).

(2) Notwithstanding subdivision (a)(1), if a court of competent jurisdiction orders that an offender's records be expunged pursuant to [§ 40-32-101](#), and the offense being expunged is an offense eligible for expunction under [§ 40-32-101](#), the TBI shall immediately remove the offender from the SOR and the offender's records shall be removed as provided in [§ 40-39-209](#).

(3) Notwithstanding subdivision (a)(1), no sooner than three (3) years after termination of active supervision on probation, parole, or any other alternative to incarceration, or no sooner than three (3) years after discharge from incarceration without supervision, an offender required to register under this part due to conviction under [§ 39-16-408](#) may file a request for termination of registration requirements with TBI headquarters in Nashville.

(4) Notwithstanding subdivision (a)(1), if a court of competent jurisdiction grants an offender's petition, filed pursuant to [§ 40-39-218](#), for termination of the requirements imposed by this part based on the offender's status as a victim of a human trafficking offense, as defined by [§ 39-13-314](#), sexual offense, under title 39, chapter 13, part 5, or domestic abuse, as defined by [§ 36-3-601](#), the Tennessee bureau of investigation shall, immediately upon receiving a copy of the order, remove the offender from the SOR.

(b) Upon receipt of the request for termination, the TBI shall review documentation provided by the offender and contained in the offender's file and the SOR, to determine whether the offender has complied with this part. In addition, the TBI shall

conduct fingerprint-based state and federal criminal history checks, to determine whether the offender has been convicted of any additional sexual offenses, as defined in § 40-39-202, or violent sexual offenses, as defined in § 40-39-202.

(c) The TBI shall remove an offender's name from the SOR and notify the offender that the offender is no longer required to comply with this part if it is determined that:

(1) The offender has successfully completed a term of judicial diversion, pursuant to § 40-35-313, for an offense under § 39-13-505 or § 39-13-506(a) or (b), for which the person is required to register under this part;

(2) The offender previously entered a term of judicial diversion, pursuant to § 40-35-313, prior to May 24, 2019, for the offense for which the person is required to register under this part and subsequently successfully completes the term of judicial diversion; or

(3) The offender has not been convicted of any additional sexual offense or violent sexual offense during the ten-year period and the offender has substantially complied with this part and former part 1 of this chapter [repealed].

(d) If it is determined that the offender has been convicted of any additional sexual offenses or violent sexual offenses during the ten-year period or has not substantially complied with this part and former part 1 of this chapter [repealed], the TBI shall not remove the offender's name from the SOR and shall notify the offender that the offender has not been relieved of the provisions of this part.

(e) If an offender is denied a termination request based on substantial noncompliance, the offender may petition again for termination no sooner than five (5) years after the previous denial.

(f) Immediately upon the failure of a sexual offender to register or otherwise substantially comply with the requirements established by this part, the running of the offender's ten-year reporting period shall be tolled, notwithstanding the absence or presence of any warrant or indictment alleging a violation of this part.

(g)(1) An offender whose request for termination of registration requirements is denied by a TBI official may petition the chancery court of Davidson County or the chancery court of the county where the offender resides, if the county is in Tennessee, for review of the decision. The review shall be on the record used by the TBI official to deny the request. The TBI official who denied the request for termination of registration requirements may submit an affidavit to the court detailing the reasons the request was denied.

(2) An offender required to register under this part shall continue to comply with the registration, verification and tracking requirements for the life of that offender, if that offender:

(A) Has one (1) or more prior convictions for a sexual offense, as defined in § 40-39-202, regardless of when the conviction or convictions occurred;

(B) Has been convicted of a violent sexual offense, as defined in § 40-39-202; or

(C) Has been convicted of an offense in which the victim was a child of twelve (12) years of age or less.

(2) For purposes of subdivision (g)(2)(A):

(A) "Prior conviction" means that the person serves and is released or discharged from, or is serving, a separate period of incarceration or supervision for the commission of a sexual offense prior to or at the time of committing another sexual offense;

(B) "Prior conviction" includes convictions under the laws of any other state, government or country that, if committed in this state, would constitute a sexual offense. If an offense in a jurisdiction other than this state is not identified as a sexual offense in this state, it shall be considered a prior conviction if the elements of the offense are the same as the elements for a sexual offense; and

(C) "Separate period of incarceration or supervision" includes a sentence to any of the sentencing alternatives set out in § 40-35-104(c)(3)-(9). A sexual offense shall be considered as having been committed after a separate period of incarceration or supervision if the sexual offense is committed while the person was:

(i) On probation, parole or community correction supervision for a sexual offense;

(ii) Incarcerated for a sexual offense;

(iii) Assigned to a program whereby the person enjoys the privilege of supervised release into the community, including, but not limited to, work release, educational release, restitution release or medical furlough for a sexual offense; or

(iv) On escape status from any correctional institution when incarcerated for a sexual offense.

(h)(1) Any offender required to register pursuant to this chapter because the offender was convicted of the offense of statutory rape under § 39-13-506 and the offense was committed prior to July 1, 2006, may file a request for termination of registration requirements with TBI headquarters in Nashville, if the offender would not be required to register if the offense was committed on or after July 1, 2006.

(2) Upon receipt of the request for termination, the TBI shall review documentation provided by the offender and contained in the offender's file and the SOR, to determine whether the offender would not be required to register if the offender committed the same offense on or after July 1, 2006. In addition, the TBI shall conduct fingerprint-based state and federal criminal history checks, to determine whether the offender has been convicted of any additional sexual offenses, as defined in § 40-39-202, or violent sexual offenses, as defined in § 40-39-202.

(3) If it is determined that the offender would not be required to register if the offense was committed on or after July 1, 2006, that the offender has not been convicted of any additional sexual offenses or violent sexual offenses and that the offender has

substantially complied with this part and any previous versions of this part, the TBI shall remove the offender's name from the SOR and notify the offender that the offender is no longer required to comply with this part.

(4) If it is determined that the offender would still be required to register even if the statutory rape had been committed on or after July 1, 2006, or that the offender has been convicted of any additional sexual offenses or violent sexual offenses during the period of registration or has not substantially complied with this part and the previous versions of this part, the TBI shall not remove the offender's name from the SOR and shall notify the offender that the offender has not been relieved of this part.

(5) An offender whose request for termination of registration requirements is denied by a TBI official may petition the chancery court of Davidson County or the chancery court of the county where the offender resides, if the county is in this state, for review of the decision. The review shall be on the record used by the TBI official to deny the request. The TBI official who denied the request for termination of registration requirements may submit an affidavit to the court detailing the reasons the request was denied.

(i)(1)(A) If a person convicted of an offense was not required to register as an offender prior to August 1, 2007, because the person was convicted, discharged from parole or probation supervision or discharged from incarceration without supervision prior to January 1, 1995, for an offense now classified as a sexual offense, the person may file a request for termination of registration requirements with TBI headquarters in Nashville, no sooner than five (5) years from August 1, 2007, or the date the person first registered with the SOR, whichever date is later.

(B) The procedure, criteria for removal and other requirements of this section shall otherwise apply to an offender subject to removal after five (5) years as specified in subdivision (i)(1)(A).

(2) If a person convicted of an offense was not required to register as an offender prior to August 1, 2007, because the person was convicted, discharged from parole or probation supervision or discharged from incarceration without supervision prior to January 1, 1995, for an offense now classified as a violent sexual offense, the person shall continue to comply with the registration, verification and tracking requirements for the life of that offender.

(3)(A) If a person convicted of an offense was not required to register as an offender prior to July 1, 2010, for an offense now classified as a sexual offense, the person may file a request for termination of registration requirements with TBI headquarters in Nashville, no sooner than five (5) years from July 1, 2010, or the date the person first registered with the SOR, whichever date is later.

(B) The procedure, criteria for removal and other requirements of this section shall otherwise apply to an offender subject to removal after five (5) years as specified in subdivision (i)(3)(A).

(C) If a person convicted of an offense was not required to register as an offender prior to July 1, 2010, for an offense now classified as a violent sexual offense, the person shall continue to comply with the registration, verification and tracking requirements for the life of that offender.

(4) Unless otherwise authorized by law, a person required to register as any form of a sexual offender in this state due to a qualifying offense from another jurisdiction which is classified as a sexual offense in this state may apply for removal from the registry pursuant to subdivision (a)(1) following the later of:

(A) Ten (10) years from the date of termination of active supervision or probation, parole or any other alternative to incarceration, or after discharge from incarceration without supervision; or

(B) Five (5) years after being added to the Tennessee sexual offender registry.

(j)(1) Violent juvenile sexual offenders who are currently registered as such and who receive a subsequent adjudication in juvenile court or a court having juvenile court jurisdiction for one of the offenses listed in § 40-39-202(29) or a crime that if committed in this state would require registration shall be required to register for life. Information concerning the violent juvenile sexual offender who commits a subsequent offense listed in § 40-39-202(29), which was formerly considered confidential under § 40-39-206(e), shall be deemed public information once the offender reaches the offender's eighteenth birthday.

(2) Violent juvenile sexual offenders who are currently registered as such and who, upon reaching the age of eighteen (18), are convicted of a sexual offense as set out in § 40-39-202(20) or a violent sexual offense as set out in § 40-39-202(31) shall be required to register for life. Information concerning the violent juvenile sexual offender who commits a subsequent offense listed in § 40-39-202(20) or § 40-39-202(31), which was formerly considered confidential under § 40-39-206(e), shall be deemed public information.

(3) Violent juvenile sexual offenders who reach the age of twenty-five (25), and who have not been adjudicated or convicted of a subsequent qualifying offense as set out in subdivisions (j)(1) and (2) or any offense set out in subdivision (g)(2)(C), shall be eligible for termination from the SOR. Upon reaching the age of twenty-five (25), the violent juvenile sexual offender may apply for removal from the SOR by use of a form created by the TBI. The form will contain a statement, sworn to by the offender under the penalty of perjury, that the offender has not been convicted of or adjudicated delinquent of any of the offenses set out in subdivisions (j)(1) and (2) or any offense set out in subdivision (g)(2)(C).

(4) TBI shall also conduct fingerprint-based state and federal criminal history checks to determine whether the violent juvenile sexual offender has been convicted of or adjudicated on any prohibited crimes as set out in subdivisions (j)(1) and (2) or any offense set out in subdivision (g)(2)(C), including crimes committed in other jurisdictions.

(5) If the violent juvenile sexual offender has not been convicted or adjudicated delinquent in any of the prohibited crimes, the offender shall be removed from the sex offender registry.

Credits

2004 Pub.Acts, c. 921, § 1; 2005 Pub.Acts, c. 316, § 1; 2006 Pub.Acts, c. 890, § 18, eff. July 1, 2006; 2008 Pub.Acts, c. 1164, § 7, eff. July 1, 2008; 2010 Pub.Acts, c. 1138, § 11, eff. July 1, 2010; 2011 Pub.Acts, c. 483, § 15, eff. July 1, 2011; 2014 Pub.Acts, c. 744, § 2, eff. April 21, 2014; 2014 Pub.Acts, c. 770, §§ 2, 3, eff. July 1, 2014; 2015 Pub.Acts, c. 284, §§ 2, 3, eff. July 1, 2015; 2015 Pub.Acts, c. 469, § 2, eff. July 1, 2015; 2019 Pub.Acts, c. 502, §§ 1, 2, eff. May 24, 2019.

Notes of Decisions (17)

T. C. A. § 40-39-207, TN ST § 40-39-207

Current with laws from the 2021 First Extraordinary Sess. of the 112th Tennessee General Assembly, eff. through February 3, 2021. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text.

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